his contribution to his mother's support. Accordingly, there will be judgment for $33,600 on the mother's claim for dependency.

Section 9 of the Act empowers the court to award interest on damages. Following the current practice in Singapore courts, interest should be calculated at 3% pa on the amount of damages for dependency of $33,600 from the date of the accident, 3 June 1986 to the date of judgment.

Under s 7 and r 5 of the Intestate Succession Act (Cap 146, 1985 Ed), the mother as one of the two surviving parents would take the deceased's estate in equal proportions. Consequently, the award to her as a dependant will be reduced by the amount received by her through the estate as a beneficiary.

As the main issue in this appeal was the possible dependency of the mother of the deceased, the appropriate order would be for the plaintiff to have her costs.

Order accordingly.

Solicitors: *Goh Poh & Partners; TS Tan.*

Reported by *Mathavan Devadas*

Public Prosecutor v Ko Mun Cheung & Anor

HIGH COURT (SINGAPORE) — CRIMINAL CASE NO 17 OF 1988
CHAN SEK KEONG AND YONG PUNG HOW JJ
15 MARCH 1990

Criminal Law — Dangerous drugs — Trafficking in — Importing — Whether bringing into Singapore on the way to ultimate destination was 'importing' — Misuse of Drugs Act (Cap 185, 1985 Ed), ss 7, 18(2), 33 & First Schedule — Criminal Procedure Code (Cap 68, 1985 Ed), s 122(6) — Narcotic Control Act 1960-61 [Canada], s 5(1) — Interpretation Act (Cap 353, 1985 Ed), s 2

Words and Phrases — 'Importing' — Misuse of Drugs Act (Cap 185, 1985 Ed), s 7

The two accused were charged with importing into Singapore a controlled drug under the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act') and thus committing an offence under s 7 punishable under s 33. The first accused's defence is that he did not know he was carrying drugs in his vest. The second accused had admitted all along, that he knew he was carrying 'Pak Fun' from Bangkok to Amsterdam. He stated that he agreed and that it was his intention to carry the drug to Amsterdam but not to Singapore and that he broke his journey in Singapore for convenience and not with a view to disposing of the drug in Singapore or delivering it to any person. His counsel has submitted that he had not committed the offence of importing the drug into Singapore under s 7 of the Act but only of being in possession under s 5 thereof.

Held, finding both accused guilty of trafficking:

(1) The court did not believe that the first accused did not know what was in the 16 packets that were stitched to the vest which was worn by him into Singapore, nor did the court believe that his supplier did not tell him that he was being asked to carry drugs from Bangkok to Amsterdam via Singapore.

(2) Section 18(2) of the Act provides that any person who has in his possession a controlled drug shall, until the contrary is proved, be presumed to have known the nature of that drug. The first accused was found in possession of drugs on his body and accordingly the onus of discharging that presumption lies on him. The standard of proof is the balance of probabilities. He has failed to discharge this burden.

(3) By bringing the drugs into Singapore, even it was not for the purpose of disposing of the drug in Singapore or delivering to any person in Singapore, the second accused had trafficked in drugs by importing them into Singapore.

Cases referred to

1 *R* v *Geesman* (1970) 13 CRNS 240 (folld)
2 *R* v *Bell* (1984) 3 DLR (4th Ed) 385 (refd)
3 *R* v *Smith* [1973] 1 QB 924 (refd)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) s 122(6)
Interpretation Act (Cap 1, 1985 Ed) s 2
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 7, 18(2), 33, First Schedule
Narcotic Control Act 1960-61 [Canada] s 5(1)

Seng Kwang Boon for the Public Prosecutor.
S Rajagopal for the first accused.
Tan Kay Bin for the second accused.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): You, Ko Mun Cheung, Raymond, are charged as follows:

> That you on or about December 1986, at about 2.20pm at the Arrival Hall of the Singapore Changi Airport, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185) to wit, 16 packets of drug containing not less than 1,133.46g of diamorphine without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 7 and punishable under s 33 of the Misuse of Drugs Act.

You, An Man Keny Chiu Sum Hing, are charged as follows:

> That you on or about 12 December 1986, at about 2.20pm, at the Arrival Hall of the Singapore Changi Airport, Singapore, did import into Singapore a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185) to wit, 16 packets of drug containing not less than 1,127.93g of diamorphine without any authorization under the said Act or the regulations made thereunder and you have thereby committed an offence under s 7 and punishable under s 33 of the Misuse of Drugs Act.

The evidence that has been adduced by the prosecution shows that both of you, who are Hong Kong nationals, boarded a Thai International Airways flight no TG 405

from Bangkok on 12 December 1986 and arrived at Changi International Airport, Singapore at about 2pm. After disembarkation, both of you were cleared through the Singapore immigration checkpoints at the airport. Both of you then proceeded to the customs checkpoint.

You, Ko, followed by AMK, proceeded to the customs checkpoint located next to Belt 21. Each of you was carrying two bags. You, Ko, were cleared by customs and you then walked out into the arrival hall where you were arrested by N/O Chew Khai Chow (PW6).

You, AMK, proceeded to Counter 20 which was opposite Belt 21. You were stopped by C/O Ahmad bin Ali (PW5). He asked you in English whether you had anything to declare. You remained silent. He asked you again, and this time you replied in English that you had nothing to declare. He then asked you for your passport which you produced. Your passport no was 898857. At that moment, two CNB officers approached the said counter, identified themselves and arrested you. The N/Os were Yip Yat Choi and Tan Wu Chyuan. At about that time, you, Ko, were also brought to the said counter by PW6.

Both of you were then brought by the N/Os to the customs search room. There, both of you were searched. You, Ko, were asked by PW6 whether you had anything to declare. You did not reply. PW6 then searched your bags. He then told you to take off your clothes, whereupon, you told him that you had something on your body. PW6 asked you what it was and you replied that it was something your friend has requested you to carry to Singapore. PW6 did not ask you what the things were. He then told you to take off your shirt, which you did. Underneath the shirt was another white T-shirt which was covering a body vest strapped to your body. PW6 felt the vest and felt something bulky concealed in the vest. You were told to dress and then handcuffed.

You, AMK, were also told to bring your bags into the customs search room by PW6. You then told PW6 in Cantonese that there was no need to search you and that the 'things' were on your body. You then touched your chest with both your hands. You were then asked what the things on your body were and you replied 'Pak Fun' (which is the Cantonese expression for heroin or diamorphine). You were then told to take off your clothes. PW6 also ascertained that you were dressed similarly like Ko. PW6 also felt your vest and felt something bulky contained in the vest. You were told to dress and then handcuffed.

After the body search, both of you were taken by car to the CNB headquarters. On the way, PW6 learnt that there was a contact man who, if he did not meet you at the airport, would look for you at Apollo Hotel at Havelock Road. The contact man, who was Ho Pak Keung, also a Hong Kong national, but known to you as 'Ah Mun' was subsequently arrested by N/Os at Apollo Hotel. The documents seized from him showed that he had booked air tickets for both of you to fly to Amsterdam. Both of you were subsequently able to identify Ah Mun at two identification parades conducted by the CNB officers.

On arrival at the CNB office at about 3.30pm, both of you with your vests containing the bulky substance were handed over to N/O Lee Kiong Lock. He then directed that photographs be taken of both of you in three stages of dressing and also the vests, each containing 16 packets of a white substance wrapped in plastic material. N/O Lee then weighed the 32 packets in your presence and found that each packet weighed approximately 120g. He then sealed and marked the said packets in two lots of 16 packets as LKL-Al-16 (seized from Ko) and LKL-Bl-16 (seized from AMK). Urine samples were also taken from both of you. Subsequently, on 15 December 1986, N/O Lee handed the said 32 packets to Dr Chow Shui Tse, the principal scientific officer at the Department of Scientific Services, for analysis. Dr Chow found, upon analysis, that the 16 packets marked LKL-Al-16 contained a total weight of not less than 1,133.46g of diamorphine and that the 16 packets marked LKL-Bl-16 contained a total weight of not less than 1,127.93g of diamorphine. Diamorphine is a Class 'A' controlled drug under the Misuse of Drugs Act (Cap 185, 1985 Ed) ('the Act').

At about 7.10pm on the same day, SNO Jamaluddin (PW7) proceeded to take a statement from you, Ko, pursuant to s 122(6) of the CPC. You elected to speak in Cantonese. A certificated interpreter, Wu Nan Yong (PW8), was present to interpret. He interpreted to you in Cantonese the charge under s 7 of the Act and the notice of warning both of which were read out in English by PW7. You were then invited to make a statement. You then made a voluntary statement which was recorded down by PW7 which was signed by you and Wu and PW7. All other statutory requirements in relation to the taking and the making of your statement were complied with.

You, AMK, also gave a s 122(6) statement to PW7 at about 7.55pm, ie immediately after Ko had given his statement. You also elected to speak in Cantonese and Wu Nan Yong was the interpreter. Again, PW7 followed the same procedure as in the case of Ko. You also made a voluntary statement which was signed by you, Wu and PW7.

As neither of you has challenged the admissibility of your statements, we admitted them in evidence. You, Ko, made the following statement:

> I owed one Ah Lock, a Hong Kong resident HK$5,000. He then pressurized me to repay the money I owed him. I told him that I have no money but Ah Lock suggested that I helped his friend to bring something to Holland and I will be paid HK$45,000. I agreed to help and I asked Ah Lock what

was this thing I was to carry. Ah Lock told me that this thing is prohibited and if at all, I were arrested, I would be fined at the very most. Ah Lock later gave me a plane ticket for Bangkok. Ah Lock greeted me at the airport in Bangkok and brought me to a hotel where I was introduced to one Ah Mun. After the introduction, Ah Lock left, I stayed there for a few days and Ah Mun gave me a few thousand bahts for spending. This morning before I left for Singapore, Ah Mun gave me a vest to put on. I put on the vest and only on my arrival in Singapore and arrested by government officers did I realize that the vest contained drugs.

You, AMK, made the following statement:

I do not know that there is such a law in Singapore. I knew what I had in the vest was heroin and I did it because I was in financial difficulties. The man who asked me to do it, Ah Mun, offered me HK$45,000. Ah Mun told me that the quantity of heroin I was to carry was only a small quantity. Later, after my arrest, I saw Ah Mun being handcuffed along the corridor of this government building.

The contact man in Singapore called Ah Mun gave evidence for the prosecution. He said that between 1985 and 1986, he had borrowed HK$10,000 from a man called Ah Lock and when he could not repay the loan Ah Lock suggested that he should assist in carrying drugs from Bangkok to Amsterdam. He agreed when he was told that all he had to do was to fly to Singapore and buy some air tickets for the carriers of the drugs. As arranged, Ah Mun went to Bangkok with Ah Lock and there he was introduced by Ah Lock to both of you. There, Ah Mun took the measurements of both of you for the purpose of making a vest for each of you. Ah Mun flew to Singapore on 10 December 1986 and in Singapore he bought two air tickets for both of you to fly to Amsterdam on 13 December 1986.

What we have just recounted is the evidence adduced by the prosecution at the close of its case against both of you. On this evidence, we found that the prosecution has made out a case against both of you which, if unrebutted, would have warranted your convictions. Accordingly, we called on both of you to enter on your defence. Both of you elected to give evidence in the witness box.

You, Ko, testified that you owed one Ah Lock about HK$3,000 as a gambling debt. You then modified this statement and said that you owed two other gamblers the said sums and that they had threatened to assault you if you did not pay up, and that Ah Lock acted as your guarantor as a result of which the threats were averted. However, you did not know whether Ah Lock actually paid your debt. You said that because Ah Lock had stood surety for you, he was able to persuade you to assist him in carrying some things to Amsterdam after telling you that although it was illegal to do so, it was not dangerous as, if you were arrested, all that would happen would be that the things would be forfeited and that you would be fined. He also offered you a handsome reward for the job, the amount being HK$45,000. Later on, you said Ah Lock decided to throw in his own fee of $5,000 to enable you to pay off your gambling debt and to buy winter clothing. You said that whilst waiting for about a month for your passport to be issued to you, you had thought about the nature of the things you had agreed to carry for Ah Lock. It crossed your mind that the things would have to be valuable and therefore could be counterfeit notes or antiques or diamonds or drugs. You said that you asked Ah Lock what the things were but he said that he could not tell you at that early stage for fear that you might tell other people. Later, you asked Ah Lock again but again he would not tell you. In your mind, you discounted that the things you would be asked to carry were ganja or MX pills as they were freely available in Hong Kong and that it would not be necessary to get them from Bangkok. You also discounted heroin as you had been told by Ah Lock that you would only be fined and you were aware that you would be imprisoned if you were arrested for having possession of heroin. You said that you trusted Ah Lock as he had never cheated you. Finally, you came to the conclusion that the things you would be carrying must be diamonds, and this, to your mind, was confirmed when you asked Ah Lock whether you were being required to carry diamonds and he just smiled and did not reply.

As arranged with Ah Lock, you flew to Bangkok on 8 December 1986 to start your mission. You were met in Bangkok by Ah Lock who later introduced you various people, viz Ah Mun, AMK (second accused), one Tai Tow Chai or Tai Tow Sook, a Thai who was the boss. Your body measurements were taken by Ah Mun and later you went to a house in the outskirts of Bangkok with TTC or TTS for fitting. You were fitted with a vest which you felt was heavy, weighing at least 1kg. The vest was lined with packets of things stitched into the vest. You could not see what was in the packets in the vest. You said if you had known that they contained heroin, you would not have agreed to take them to Amsterdam. When asked by the DPP as to what you thought were in the packets in the vest, you said that you did not know. When asked whether you thought they concealed diamonds, you thought it was possible as if you were asked to carry diamonds, it would not be a few but a lot. You met Ah Lock again on 11 December 1986, but again you did not ask him what was in your vest. You felt it was useless to ask again as you had asked, he had smiled and so you thought your guess that they contained diamonds was correct.

After you boarded the plane to Singapore on 12 December 1986, the plan was that you would on board the plane exchange your travelling bag with one carried by the Thai national. The bag to be exchanged for yours would contain the two vests which you and AMK would wear to Singapore. This plan was carried out after the plane had landed at and flew out of Phuket. You took the bag to the toilet, took out one of the vests and put it on. You handed the bag to AMK when you came out of the toilet.

When you landed in Singapore, you were arrested at the arrival hall. When you were asked in the customs search room what was in the vest you said you did not know. When you were questioned by the DPP why you did not tell the CNB officers that it contained diamonds if you, as you have claimed, believed that you were carrying diamonds, your reply was that you were nervous as you were doing something illegal and that the best thing to do was to say you did not know. Your defence is that you did not know you were carrying drugs in your vest.

We have given careful consideration to your testimony and the submissions of your counsel on the evidence. We do not believe that you did not know what was in the 16 packets that were stitched to the vest which was worn by you into Singapore, nor do we believe that Ah Lock did not tell you that you were being asked to carry drugs from Bangkok to Amsterdam via Singapore. Although you were relatively young, you were not a simpleton as your counsel has said you were. You were familiar with cannabis and knew what MX pills were and had also seen pictures of heroin and you also knew that drugs were not welcome in foreign countries and that illegal possession of drugs would mean imprisonment. We do not see how you could have remained under the impression, assuming that we accept your evidence that you believed that you were being asked to carry something valuable like diamonds, that the vest weighing more than 1 kg and with 16 bulging packets stitched to it could contain diamonds. We do not believe that you could have been under the impression that you were not carrying something 'dangerous' when you were being paid HK$45,000, a substantial sum of money for someone who assisted in the selling of poultry, for carrying something to Amsterdam. We do not think you were so naive that you really thought the bulky patches on a specially designed vest contained diamonds and not drugs.

Section 18(2) of the Act provides that any person who has in his possession a controlled drug shall, until the contrary is proved, be presumed to have known the nature of that drug. You were found in possession of drugs on your body and accordingly the onus of discharging that presumption lies on you. The standard of proof is the balance of probabilities. In our view, for the reasons we have given, you have not proved, on a balance of probabilities, that you did not know the nature of the drugs you were carrying. You had a lot of time and many opportunities to find out whether you were being asked to carry drugs to Amsterdam. You had suspicions that it was drugs that you were being asked to carry and you made no effort to find out in a more positive manner what the vest contained. We do not think that the presumption that you know the nature of the drug has been rebutted by your failure to enquire further, after having had suspicions that it could be drugs that you were being asked to carry.

You, AMK, have admitted all along, from the moment you were arrested and in the witness stand, that you knew you were carrying 'Pak Fun' from Bangkok to Amsterdam. You agreed to do so at the request of Ah Lock because you were in financial difficulties. You stated that you agreed and it was your intention to carry the drug to Amsterdam but not to Singapore and that you broke your journey in Singapore for convenience and not with a view to disposing of the drug in Singapore or delivering it to any person, not even Ah Mun, your contact man in Singapore, who would be accompanying you to Amsterdam. The air tickets seized by the CNB officers from Ah Mun corroborated your evidence as regards your intention to carry the drug to Amsterdam. So did Ah Mun's evidence.

On this evidence, your counsel has submitted that you have not committed the offence of importing the drug into Singapore under s 7 of the Act but only of being in possession under s 5 thereof. The submission is valid only if the word 'import' in s 7 has a meaning which restricts it to bringing something into Singapore as its ultimate destination. The DPP has referred us to two decisions which support the contrary view that the word 'import' in s 7 should be given its ordinary and natural meaning of bringing something into a country, whatever the purpose may be and whether or not it is the ultimate destination thereof. In *R* v *Geesman*,[1] a Quebec Sessions Court found the accused guilty of importing hashish into Canada under s 5(1) of the Narcotic Control Act 1960-61 when he was arrested by the customs authorities at Dorval Airport, Montreal, after arriving from Spain with ten pounds of hashish strapped to his body which he had intended to transport to British Columbia and then across the border to the United States. Section 5(1) is similar to s 7 of the Misuse of Drugs Act (Cap 185, 1985 Ed), and neither law contains a definition of the word 'import'. The President of the Court gave the word its ordinary and natural meaning, ie to bring or cause to be brought in something from a foreign country. His Honour was able to ascertain the intention of the Canadian Parliament as to the scope of that word by reference to Canada having ratified the United Nations' Single Convention on Narcotic Drugs (1961), art 1, s 1(M) of which defines the word 'import' to mean the transfer of drugs from one state to another state. *R* v *Geesman*[1] was referred to in *R* v *Bell*,[2] where the Supreme Court of Canada gave a similar meaning to the word 'import', although in that case, the ultimate destination was Canada.

The DPP also referred to the decision of the Court of Appeal (Criminal Division) in *R* v *Smith*[3] where it was held that for the purpose of showing that a person has committed the offence being knowingly concerned in the fraudulent evasion of the prohibition against the importation of cannabis imposed by the Dangerous Drugs Act 1965, contrary to s 304(b) of the Customs and Excise Act 1952, it is sufficient to prove that he had been a party to the

importation of the cannabis into the United Kingdom as a staging post for onward transmission to another country, and that it was unnecessary to show that he had done anything in the United Kingdom to further the transaction. Accordingly, the appellant was held to have been properly convicted when he arranged for cannabis to be transferred from an aircraft which had landed at Heathrow Airport to another waiting aircraft bound for Bermuda.

In our view, the reasoning in *R* v *Geesman*[1] is applicable to ascertaining the meaning of the word 'import' in s 7 of the Act. Singapore has also ratified the Single Convention on Narcotic Drugs. The Misuse of Drugs Act is not a law which is concerned with customs duty but a law enacted by Parliament as part of Singapore's efforts to suppress the illegal importation into and exportation from Singapore of controlled drugs as defined in the Misuse of Drugs Act.

Furthermore, the DPP has drawn our attention to s 2 of the Interpretation Act (Cap 1, 1985 Ed) which defines the word 'import', with its grammatical variations and cognate expressions, to mean, 'to bring or cause to be brought into Singapore by land, sea and air'. The definition is clear and unambiguous. We do not see any reason for not applying the statutory definition to the said word in the Misuse of Drugs Act.

Accordingly, we reject the submission of your counsel that you did not import diamorphine into Singapore on 12 December 1986 when you brought in 16 packets of substance containing the said drug.

For the reasons we have given, we find that on the facts and on the law the prosecution has proved its case against both of you without any reasonable doubt. We find both of you guilty as charged and we convict you accordingly.

Accused convicted.

Solicitors: *Shan Rajagopal*; *Tan Kay Bin & Co.*

Reported by *Terence Tan Bian Chye*

Koshida Trading (S) Pte Ltd v Limco Products Manufacturing Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 971 OF 1988
CHAN SEK KEONG J
1 MARCH 1990

Contract — Offer and acceptance — Whether delivery of purchase order equal to offer — Whether offer accepted by acknowledgment of receipt of purchase order — Alleged failure of plaintiff to supply ramchips — Claim for damages based on substitute purchases — Purchase from connected party — Whether damages mitigated

Civil Procedure — Summary judgment — Counterclaim and set-off — Whether defendant should be given unconditional leave to defend

The plaintiffs are suppliers of RAM microchips ('ramchips'). The defendants are manufacturers of personal computers and have been buying ramchips from the plaintiffs. By the present action, the plaintiffs claimed a sum of money that the defendant acknowledged they owed. However, the defendants submitted that they were entitled to unconditional leave to defend as they had a set-off and counterclaim exceeding $16m arising from the plaintiffs' alleged failure to supply ramchips under five purchase orders. The action for summary judgment was heard before an assistant registrar who gave the plaintiff leave to enter final judgment. From this, the defendants appealed.

The appeal centred on two issues: (a) whether because of the counterclaim, the defendants should have been given unconditional leave to defend the whole of the claim, and (b) whether because of the set-off, the defendants should have been given unconditional leave to defend part of the claim to the extent of the set-off. The defendants contended that in law, the moment the plaintiffs acknowledged receipts of the purchase order by returning the attached duplicate endorsed to the defendants a binding contract was concluded. The plaintiffs' version of how the business was conducted was that whenever the defendants wished to obtain supplies of ramchips, they would send to the plaintiffs their purchase orders setting out the desired quantities, that the plaintiffs would acknowledge receipts thereof by returning a copy thereof to the defendants, that this was followed by negotiations on the terms of the orders. Even then there is no binding contract until the plaintiffs delivered the ramchips order, when invoices and delivery orders would be delivered to the defendants.

Held, dismissing the defendants' appeal:

(1) In the court's view, looking at the terms of the purchase order and the way in which three of the purchase orders were endorsed and returned to the defendants, the court formed the view that the plaintiffs' version was probably nearer to the truth than that of the defendants.

(2) In the court's view, as a matter of construction, the form of the purchase order was clearly an offer by the defendants to purchase the goods described therein on terms set by the defendants.

(3) There was no invitation to the plaintiffs to accept the order but merely to acknowledge it in the manner described. The form did not say or purport to say that the acknowledgment would constitute a binding contract. There was nothing in the form which suggested to a reasonable supplier that acknowledging the order would bind him to supply the goods on the terms stated therein.